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NO. _____

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ALEXANDER L. STEVAS,

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

DENNIS ALBERT ROLLINS, JUNIOR
N. ENFINGER, AND JOHN D. THOMAS,
PETITIONERS,

V.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

I Whether the trial court's refusal to disclose the identity of the unnamed officer who actually received the confidential informant's tip violated the Petitioners' Sixth Amendment right to confrontation of witnesses.

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF CITATIONS AND AUTHORITIES	i
REFERENCE TO OPINION BELOW	1
JURISDICTION	1, 2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2, 3
ARGUMENT:	
I THE TRIAL COURT'S REFUSAL TO DISCLOSE THE IDENTITY OF THE UNNAMED OFFICER WHO ACTUALLY RECEIVED THE CONFIDENTIAL INFORMANT'S TIP VIOLATED THE PETITIONERS' SIXTH AMENDMENT RIGHT TO CONFRONTATION OF WITNESSES	4-11
CONCLUSION	12, 13
CERTIFICATE OF SERVICE	14

TABLE OF CITATIONS AND AUTHORITIES

	<u>Page(s)</u>
<u>Aguilar v. Texas</u>	5,6,8,9,12
378 U.S. 108, 84 S.Ct. 1509,	
12 L.Ed.2d 723 (1964)	
<u>McCray v. Illinois</u>	4
386 U.S. 300, 87 S.Ct. 1056,	
18 L.Ed.2d 62 (1967)	
<u>Pointer v. Texas</u>	4,5
380 U.S. 400, 85 S.Ct. 1065,	
13 L.Ed.2d 923 (1965)	
<u>United States v. Drew</u>	5,6,8
436 F.2d 529 (5th Cir. 1970)	

MISCELLANEOUS

United States Constitution -	2,4
Amendment VI	

REFERENCE TO THE OPINION BELOW

The conviction of Petitioners, Dennis Albert Rollins, Junior N. Enfinger and John D. Thomas, in the United States District Court for the Middle District of Alabama, was affirmed by the United States Court of Appeals, Eleventh Circuit, in an opinion filed on 3 March 1983.

On 22 March 1983, a Petition for Rehearing was timely filed with the Clerk of the Eleventh Circuit, but said Petition was denied on 15 April 1983.

JURISDICTION

The March 3, 1983, opinion of the Court of Appeals for the Eleventh Circuit upheld the district court's denial of Petitioners' motion to require the Government to disclose the name of the officer who gave the information received from the confidential informant to Lt. Bradford of the Alabama Department of Public Safety, Narcotics Division. Said information led to the arrests of the Petitioners here.

The Petitioners were subsequently convicted and filed their petition for rehearing in a timely fashion. That petition was denied on 15 April 1983.

The Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (emphasis added)

STATEMENT OF THE CASE

On January 26, 1982, Lieutenant Bradford of the Alabama Department of Public Safety, Bureau of Investigations, Narcotics Division, received a call from an unnamed law enforcement

officer who related certain information about a suspected pending exchange involving illicit narcotics. The unnamed officer gave the source of his information as being a confidential informant. (R. Vol. 2, P. 119-120)¹

The trial court denied Petitioners' (Appellants at the Court of Appeals level) motion to require the Government to disclose the name of the officer who gave Lt. Bradford the information which led to the arrest of each petitioner. The trial court's denial was affirmed by the Eleventh Circuit. U.S. v. Rollins, 699 F.2d at 534 (11th Cir. 1983).

Petitioners filed a Petition for Rehearing on 22 March 1983, based in part on the Eleventh Circuit's denial of their motion to disclose the identity of the unnamed officer. The Petition for Rehearing was denied on 15 April 1983.

1/ References to the Record of the District Court proceedings are by volume and page number.

ARGUMENT

I THE TRIAL COURT'S REFUSAL TO DISCLOSE IDENTITY OF THE UNNAMED OFFICER WHO ACTUALLY RECEIVED THE CONFIDENTIAL INFORMANT'S TIP VIOLATED PETITIONERS' SIXTH AMENDMENT RIGHT TO CONFRONTATION OF WITNESSES

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (emphasis added)
United States Constitution, Amendment VI

Confrontation of witnesses has long been guaranteed by the Constitution of the United States of America and upheld as a fundamental right of all persons. The right to confrontation has also been made obligatory on the several states as essential to a fair trial by the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965); McCray v. Illinois, 386 U.S. 300, 87 S.Ct. 1056, 18 L.Ed.2d 62 (1967). A major reason underlying

the constitutional confrontation rule is to give a defendant charged with a crime an opportunity to cross-examine the witnesses being used in the prosecution against him. Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965).

This Court, in Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964), has indicated that a confidential informant's identity need not always be revealed, thus carving out an exception to the Sixth Amendment right. The Fifth Circuit, in United States v. Drew, 436 F.2d 529 (5th Cir. 1970), followed the Aguilar decision with the explanation that confidentiality is necessary in light of the informant's precarious position in the scheme of things. Id at 534 - 535. Petitioners realize the Government's interest in protecting the safety and usefulness of its informants and do not object to the non-disclosure of the informant's name in the present case.

The present fact situation differs from the

Aguilar and Drew cases in that not only did the Government refuse to disclose the name of the informant, they also refused to disclose the name of the law enforcement official who received the tip from the informant and passed it on to Lt. Bradford of the Alabama Department of Public Safety, Narcotics Division. (R. Vol. 2, P. 120 - 121). By upholding the District Court's decision, the Eleventh Circuit has sanctioned a substantial departure from a common and accepted practice, i.e., protecting the confidentiality of a government informant.

It is clear from all of the evidence received at trial, and at no point contradicted by the Government, that the investigation and surveillance of the Petitioners which ultimately culminated in their arrest, was initiated as a result of the informant's tip to the unnamed officer. The information given by that informant, and the reliability of said informant, was the most crucial element of the Government's case against the Petitioners, yet

the Petitioners had no opportunity whatsoever to confront or cross-examine any person who had first-hand knowledge of the information or the reliability of the informant.

In situations where a court decides that it is in the best interests of the informant to prevent disclosure of his or her name, a defendant's only opportunity to defend himself against statements or information given by the informant is to question the next best source, i.e., the officer who had contact with the informant. While this substitution of parties is inherently less satisfactory or beneficial to the defendant, it at least affords the defendant some opportunity to put forth a defense in his behalf by attacking the informant's reliability or information through his law enforcement contact. By extending this protection to the informant's law enforcement contact, Petitioners have no way of inquiring into the informant's past track record or basis for believing that the Petitioners were going to engage in some

sort of criminal activity. Generally, in situations involving any kind of a drug transaction the presence or absence of probable cause to arrest is the key issue in the prosecution of a defendant. Where an informant is involved, a probable cause determination usually succeeds or fails based on the reliability of that informant. Petitioners were prevented from cross-examination of the one officer who could testify as to the reliability of the confidential informant.

The United States District Court for the Middle District of Alabama, and the Eleventh Circuit through its affirmance, have sent the Petitioners to trial with both hands tied behind their backs. Citing Drew, the Eleventh Circuit noted that the name of an informant not involved in the transaction need not be revealed. But that Court went further than Drew and Aguilar by ruling that the identity of the unnamed law enforcement officer need not be disclosed either, such disclosure serving no use-

ful purpose other than possibly leading to the discovery of the confidential informant.

In doing so, the Court of Appeals has erroneously failed to balance the interests of the Petitioners against those of the informant. Since the Aguilar decision, the state and federal courts have encountered a multitude of cases involving an unnamed informant and a named officer of the law who serves as his contact. After extensive research, Petitioners are unable to find any other case whereby a court rules that non-disclosure of a law enforcement contact is necessary to preserve the identity of an informant. Any further jeopardy an informant would be placed in by disclosure of the officer would necessarily have to result from negligence committed by that officer, and not from the mere disclosure of the officer's name. Testimony by officers in similar situations is standard procedure in criminal prosecutions, yet the District Court and the Eleventh Circuit, by their decision in this

case, have both apparently decided that disclosure of law enforcement contacts will place an informant's life or usefulness in jeopardy. The prejudice to the Petitioners in defending their case substantially outweighed any reasons the Government offered, or could have offered, as justification for the nondisclosure of the officer's name.

The Petitioners were confronted with a double hearsay situation, i.e., information given by one unnamed source to another unnamed individual and then to a known officer with the Alabama Department of Public Safety. The inherent unreliability of hearsay has been the subject of many treatises, but any prejudice to the defendant can be avoided for the most part by effective cross-examination of the declarant. The Petitioners in the case sub judice were effectively prevented from attacking the reliability of the information or the credibility of the informant who gave such information.

The Eleventh Circuit, by refusing to reverse the ruling of the district court below, has erroneously overlooked, or failed to consider the Petitioners Sixth Amendment right to be confronted by witnesses against them, and consequently have been deprived of their Fifth Amendment right to due process and a fair trial.

Accordingly, the Petitioners respectfully request this Honorable Court to grant their Petition for Writ of Certiorari and afford said Petitioners an opportunity to file a brief on the merits of their argument as set forth above.

CONCLUSION

Petitioners were arrested and convicted based on information supplied by a confidential informant, received by an unknown officer of the law, and then furnished to a known officer with the Alabama Department of Public Safety, Narcotics Division.

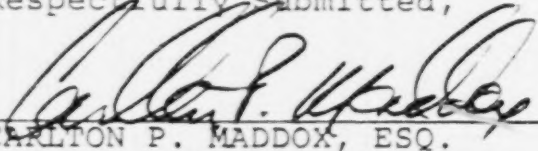
Refusal to disclose the name of the officer who actually received the tip from the informant prohibited the Petitioners from exercising their Sixth Amendment right to confront witnesses.

The prejudice to the Petitioners in defending their case substantially outweighed any reasons the Court might have had in refusing to overrule the trial court's decision that the identity of the unnamed officer need not be revealed. The Petitioners respectfully request this Court to exercise its power of supervision and overturn this substantial departure from accepted practice which so flagrantly infringes on their Sixth

Amendment rights.

The Petitioners urge this Court to grant their Petition for Writ of Certiorari, so that they might receive their guaranteed right to a fair trial.

Respectfully Submitted,



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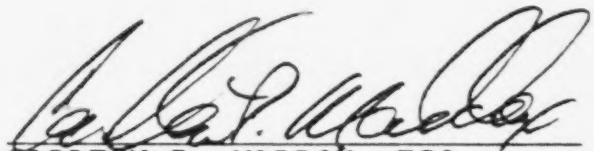
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to The Honorable John Bell, United States Attorney, Federal Building, P. O. Box 711, Lee and Church Streets, Montgomery, Alabama, 36101, and Charles R. Niven, Assistant United States Attorney, P. O. Box 197, Montgomery, Alabama, 36101, by U. S. Mail, this 19th day of May, 1983.

A handwritten signature in cursive script, appearing to read "Carlton P. Maddox", written over a horizontal line.

CARLTON P. MADDOX, ESQ.
(Counsel of Record)